HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION NO. 5715 OF 2007

DATE: 23.3.2007

BETWEEN

1. M/s M. Rama Krishna Reddy rep. By its Managing Partner

….Petitioners

AND

1. The Principal Secretary, Irrigation & CAD, A.P Secretariat, Saifabad, Hyderabad and three others

…. Respondents

HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION NO. 5715 OF 2007

ORAL ORDER:

The petitioner is a Special Class Contractor. He was awarded the contract for construction of a High Level Bridge across Chitravathi River. The agreement was entered into on 4.4.2005. One of the conditions of the agreement relates to payment of seigniorage fee on the minor minerals used in the work. Clause 100.1 of the Agreement incorporated the rates of seigniorage fee to be levied from the petitioner, and made over to the department of Mines and Geology. Clause 100.2 provided that in case there is any enhancement of seigniorage fee, during the subsistence of the contract, the petitioner shall be liable to pay the same at the enhanced rates.

The petitioner states that the Department of Industries issued G.O.Ms.No. 217 dated 29.9.2004 revising the rates of seigniorage fee to various minerals, and though the agreement was entered into subsequent thereto, the old rates were incorporated in the agreement, whereas, deductions are being effected, as per the rates in G.O.Ms.No. 217. He challenges the validity of the Clause 100.2 of the agreement and the action of the respondents, in deducting the seigniorage fee on revised rates.

Having regard to the nature of the disposal which this court intends to give to this Writ Petition, it is not necessary to wait till the respondents file the counter affidavits.

Heard the learned counsel for the petitioner and the learned Government Pleader for R & B and Irrigation.

Basically, it is the obligation of the petitioner to pay seigniorage fee for the minor minerals utilized by him in the work,

to the department of Mines and Geology. To ensure appropriate and proper recovery of the fee the agreement provided for deduction of the said amounts from the bills, payable to the petitioner. The agreement for the work has no bearing on the rates of seigniorage fee, as such. It is only the rates that are prescribed by the department of mines and geology, that would govern the matter.

It is common that huge quantities of minor minerals are utilized in the works of this nature. If the cost of the mineral or the other charges of execution in relation thereto alone are taken into account while preparing the estimates, the rates of seigniorage fee would not have any impact on the estimates. However, the record discloses that the estimates were prepared taking into account the amounts of seigniorage fee to be paid on the corresponding quantities of minerals. As observed earlier, Clause 100-1 had mentioned the rates of seigniorage fee for as many as six minerals. The seigniorage fee of sand was shown as Rs. 30/- per cubic metre. Under G.O.Ms.No. 217 dated 29.9.2004, the seigniorage fee for mineral is 36/- per cubic metre. The complaint of the petitioner as to his being required to pay the seigniorage fee on the basis of G.O.Ms.No. 217 could have been brushed aside, had it been the case where the revision took place after the agreement is executed. As observed earlier, the rates stipulated under G.O.Ms.No. 217 were very much in force when the agreement came to be entered into. Therefore, there is a clear discrepancy between the rates that were prevalent when the agreement was entered into, and rates that are mentioned in it.

The Government did notice this anomaly and referred the matter to a Committee of Chief Engineers. The Committee, at its

meeting held on 4.1.2004 had resolved to recommend that the estimates of the works be prepared, by taking into account the existing rates of seigniorage fee. Though it is urged that the benefit of the recommendation of the Committee is extended to the contracts that were entered into beyond a particular point of time, the petitioner has drawn the attention of this court, to instances where the Government had extended the benefit to contracts that were extended into before the date of recommendation. This however, is a matter, which needs to be examined by the concerned authorities. For this purpose, the petitioner has to make a representation, duly referring to the relevant facts and instances.

The Writ Petition is therefore disposed of, leaving it open to the petitioner to make a representation to the Government of Andhra Pradesh, represented by its principal secretary R & B Department, the second respondent herein, to extend the benefit of recommendations of the Committee of Chief Engineers as regards the payment of seigniorage fee. The representation if made, shall be disposed of within a period of four weeks from the date of receipt of a copy thereof. There shall be no order as to costs.

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L. NARASIMHA REDDY, J

Date: 23.3.2007
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